

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ORANGE TRANSPORTATION SERVICES, INC.,

Plaintiff,

vs.

VOLVO GROUP NORTH AMERICA, LLC,

Defendant.

**DECLARATION OF SCOTT SURRETT
IN SUPPORT OF DEFENDANT'S
MOTION TO DISMISS**

Civil Action No. 6:19-cv-06289-FPG

I, Scott Surret, hereby declare as follows:

I am a Principal Engineer for the Defendant Volvo Group North America, LLC ("Volvo") in the above-captioned matter and I am authorized to make this statement on behalf of Volvo. I submit this declaration in support of Volvo's Motion to Dismiss to place before the Court documents and information necessary for its determination of this motion.

1. Attached hereto as Exhibit E is a true and correct copy of Volvo's Standard Engine Warranty Certificate that sets forth the terms of the standard engine warranty issued by Volvo for the D13 engines in the trucks purchased by Orange Transportation Services, Inc.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on May 20, 2019 in Greensboro, North Carolina.

s/ Scott Surret
Scott Surret

EXHIBIT E

EXHIBIT E



STANDARD ENGINE WARRANTY CERTIFICATE (EPA2010 and Newer)

Volvo Group North America LLC, d/b/a Volvo Trucks North America, warrants certain individual components of each new Volvo D11, D13 and D16 EPA 2010 and newer emission engine in a new Volvo truck to be free from defects in material and workmanship under normal use and service up to the periods specified, provided all Volvo Trucks North America maintenance and inspection requirements are followed. See your local authorized Volvo Trucks dealer for recommended maintenance and inspection procedures. All warranty periods are calculated from the date in service of the vehicle. All coverage is 100% for parts and labor subject to the qualifications, limitations and exclusions as noted.

LIMITATIONS AND EXCLUSIONS TO THIS WARRANTY APPEAR ON THE FOLLOWING PAGES OF THIS CERTIFICATE. THESE LIMITATIONS AND EXCLUSIONS ARE IMPORTANT AND MUST BE READ AND UNDERSTOOD.

This warranty applies to only new Volvo D11, D13, and D16 engines meeting EPA 2010 and newer emission requirements in new Volvo trucks operated in the United States and Canada and placed in service on or after **January 1, 2010**. Volvo Trucks North America reserves the right to make the same changes in design, or make additions to or upon its products, without incurring any obligations to make the same changes on engines previously built.

Standard Volvo Engine Components Coverage: 24 months or 250,000 miles (402,000 kilometers), whichever occurs first, unless otherwise noted.

Major Components Coverage: 60 months or 500,000 miles (805,000 kilometers), whichever occurs first.

USE OF IMPROPER OR UNAPPROVED FUEL OR ENGINE OIL WILL VOID THE ENGINE AND AFTER TREATMENT SYSTEM (DIESEL PARTICULATE FILTER) WARRANTIES. 2010 EPA EMISSION ENGINES REQUIRE THE USE OF EO-O PREMIUM PLUS (OR VDS-4) SPECIFICATION HIGH PERFORMANCE DIESEL ENGINE OIL AND ULTRA LOW SULFUR DIESEL (ULSD) FUEL.

USE OF FLUIDS OTHER THAN API CERTIFIED DIESEL EXHAUST FLUID (DEF) WILL COMPROMISE AFTERTREATMENT SYSTEM PERFORMANCE, INCREASE EMISSIONS, AND MAY IMPACT THIS TRUCKS PRODUCT WARRANTIES.

SEE FOLLOWING TABLE FOR SPECIFIC COVERAGES:

Covered Standard Components List: 24 Months or 250,000 miles	Qualifications and Limitations
Air Compressor	
Air Compressor Sprocket	
Bearings	All internal lubricated bearings and bushings only.
Camshaft, Caps and Bolts	Failures resulting from the valve and injector adjustments not being maintained properly are NOT covered. Normal maintenance adjustments are NOT covered.
Connecting Rods, Caps, and Bolts	
Coolant Duct Cover	
Crankcase Ventilation Assembly	
Crankshaft	
Crankshaft Hub	
Cylinder Block Casting, Main Caps & Bolts	
Cylinder Block Expansion Plugs	
Cylinder Block Heater	
Cylinder Head Casting and Bolts	
Cylinder Head Expansion Plugs	
Cylinder Head Gasket	
EGR (Exhaust Gas Recirculation) Components	All components including pipes, clamps, fittings, & gaskets. Excludes: EGR cooler vibration damper which is a maintenance item.
EGR Control Valve	
EGR Cooler	
EGR Mixing Chamber	

Covered Standard Components List: 24 Months or 250,000 miles	Qualifications and Limitations
EGR System Wiring Harness	
Electrical EA Harness Supplied with Engine	(From ECU to sensors and injectors)
Electronic Control Unit (ECU)	For the failure to be covered under <u>Emissions Components</u> , the failure must effect the emissions of the unit.
Engine Brake Mechanism (VEB)	Includes: VEB Control valve and VEB Rocker arms. Factory installed only.
Diesel Particulate Filter Assembly (DPF) with Diesel Oxidation Catalyst (DOC)	Includes: After-treatment Hydrocarbon Injector (AHI), After-treatment Wiring Harness, After-treatment Control Module, Diffuser Pipe (AHI mounting), Fuel lines to AHI Injector, AHI Shutoff Valve, AHI Fuel Pressure Sensor, Discharge Recirculation Valve (Heat Mode), Discharge Recirculation Valve Solenoid, Pre-Catalyst Temperature Sensor, Post-Catalyst Temperature Sensor, Downstream DPF Temperature Sensor, Differential Pressure Sensor.
Diesel Particulate Filter Assembly (DPF) with Thermal Regenerator (TR)	Includes: Air Solenoid Valve, Atomization Block, After-treatment Wiring Harness, After-treatment Control Module, Ignition Coil, Fuel Pump/Shutoff Valve Assembly, Igniter (Spark Plug), Nozzle, Engine Exhaust Temperature Sensor, Filter Inlet Temperature Sensor, Filter Outlet Temperature Sensor, Flame Temperature Sensor, Differential Pressure Sensor.
Exhaust Manifold Casting	
Exhaust Manifold Joint Seals, Gaskets, Wraps or Rings	
Fan Belt Tensioner Assembly & Bracket	Excludes fan belt.
Flywheel	
Flywheel Housing	
Flywheel Ring Gear	Excludes failures caused by starter failure.
Fuel Filter Housing	
Fuel Injector Sleeves	Seals included.
Fuel Injectors	Adjustments <u>NOT</u> covered.
Fuel Pressure Regulator Valve	
Fuel Transfer Pump	
Gaskets, Seals, O Rings, Silicon Sealant	
Gears	All internal lubricated gears only.
Hoses and Lines, Supplied with Engine	Fluid carrying. Engine to engine mounted.
Idler Pulleys	
Intake Manifold	
Ladder Frame	
Oil Cooler Core	Engine oil cooler.
Oil Fill Tube and Cap	
Oil Filter Housing	
Oil Pan	
Oil Pump	
Piston Coolers	
Pistons, Rings and Liners	Wear out <u>NOT</u> covered.
Power Steering Pump	
Pre-heater	Factory installed only.
PTO Drive / REPTO (Rear engine mounted PTO Drive)	Factory installed only. Excludes all pumps or driven devices.
Rocker Arm Assembly and Shafts	Includes VEB Rockers and non-VEB rockers. Failures resulting from the valve and injector adjustments not being maintained properly are <u>NOT</u> covered. Normal maintenance adjustments are <u>NOT</u> covered.
Selective Catalytic Reduction (SCR)	SCR Assembly, DEF Pump Assembly (Pump Reverting Valve, Pump Pressure Sensor), DEF Injector, DEF Tank Heating Control Valve.
Sensor, Coolant Temperature	
Sensor, Crankcase Pressure	
Sensor, Crankshaft (Engine Timing)	
Sensor, DPF Temperature & Pressure	
Sensor, EGR Temp. and Pressure	
Sensor, Engine Oil Level and Temp.	
Sensor, Engine Oil Pressure	

Covered Standard Components List: 24 Months or 250,000 miles	Qualifications and Limitations
Sensor, Engine Position (Camshaft)	
Sensor, Fuel Pressure and Temperature	
Sensor, Humidity	
Sensor, Intake Boost Pressure and Temperature	
Sensor, NOx (SCR Inlet and Outlet)	
Sensor, Temperature & Pressure - Inlet Manifold Air	
Starter Motor	
Thermostat (Coolant)	
Thermostat Side Cover (Coolant)	
Towing	Covered 24 months/250k miles (402,000 kilometers)
Turbocharger Assembly	Includes the VGT Actuator Module.
Valve Assembly	Includes the valves, springs, keepers, guides, rotators and seats. Failures resulting from the valve adjustments not being maintained properly are NOT covered. Normal maintenance adjustments are NOT covered.
Valve Cover	
Valve Yokes (Bridge) and Pins	Failures resulting from the valve adjustments not being maintained properly are NOT covered. Normal maintenance adjustments are NOT covered.
Vibration Dampers and Bolts	Attached to the crankshaft or camshaft.
Water Pump Assembly	
Water Pump Housing	
Covered Major Components List: 60 Months or 500,000 Miles	Qualifications and Limitations
Camshaft, Caps and Bolts	Failures resulting from valve & injector adjustments not maintained properly are NOT covered. Normal maintenance adjustments are NOT covered.
Connecting Rods, Caps, and Bolts	
Coolant Pump Housing	
Crankshaft	
Cylinder Block Casting, Main Caps & Bolts	
Cylinder Head Casting and Bolts	
Exhaust Manifold Casting	
Flywheel Housing	
Intake Manifold	
Ladder Frame	
Oil Pump Drive and Driven Gears	
Thermostat Housing (Coolant)	
Timing Gear Cover and Mounting Plate	

Volvo Trucks North America reserves the right to make any changes in design or to make additions to or upon its products without incurring any obligations to install the same on vehicles previously built.

THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES AND REPRESENTATIONS OR CONDITIONS, STATUTORY OR OTHERWISE, EXPRESSED OR IMPLIED INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

THESE LIMITATIONS AND EXCLUSIONS ARE IMPORTANT AND MUST BE READ AND UNDERSTOOD.

LIMITATIONS: Volvo Trucks North America's obligation is limited to, at its sole option, repair or replacement of parts which are acknowledged by it to be defective. In the case of acknowledged defective assemblies, exchange with factory rebuilt units may occur. The defective parts or assemblies replaced shall become the property of Volvo Trucks North America. Warranty repairs performed by an authorized Volvo Trucks dealer in accordance with the terms of the warranty set forth herein are free of charge. Warranty repairs do not constitute an extension of the original warranty period for the engine or any part thereof. Warranty consideration can only be given if the deficiency is brought to the attention of an authorized Volvo Trucks dealer upon discovery and the engine must be made available, in a timely fashion during the coverage period, for repair.

**NO PAYMENT OR OTHER COMPENSATION WILL BE MADE FOR CONSEQUENTIAL,
INDIRECT, INCIDENTAL EXPENSES OR DAMAGES OF ANY KIND.**

EXCLUSIONS:

1. **REPAIR:** Warranty consideration can only be given if the deficiency is brought to the attention of an authorized Volvo Trucks dealer upon discovery and the truck must be made available, in a timely fashion during the warranty period, for repair. Failures resulting from the user's unreasonable delay in making the truck available, after being notified of a potential product problem, are not covered.
2. **DAMAGES:** Damages due to accidents, misuse, negligence, improper operations, alterations, storage or transport, operation at excessive speeds, loading beyond the factory rated load capacity, and improper or insufficient maintenance services are not covered. Damages due to failure to follow Volvo Trucks North America's recommended service procedures are considered damages due to improper maintenance services.
3. **PROGRESSIVE DAMAGE:** Damages due to failure of operator to take reasonable precautions to mitigate damage are not covered. Damages to covered part due to failure of non-covered part are not covered. Coverage is limited to failure of covered part directly causing failure of non-covered part, where operator took reasonable precautions to mitigate damages.
4. **APPLICATION:** The selling dealer is responsible for the correct application and/or specification for a vehicle sold to a customer. Vehicle application problems, including but not limited to, replacement of incorrect axle or transmission gear ratios, failures of component parts of vehicles being operated in excess of factory rated load capacities, or the use of a vehicle for a purpose of which it was not intended are not covered.
5. **FUEL INJECTORS:** Damage due to fuel injectors due to erosion caused by poor fuel quality is not covered.
6. **ALTERATIONS:** Any vehicle or vehicle system repaired, altered, or inspected in any way, so as to adversely affect, in Volvo Trucks North America's sole judgment, its stability, durability, or reliability, is not covered.
7. **OPTIONAL EQUIPMENT:** Any part of the truck that fails, malfunctions, or does not perform as a result of improper conversion or installation of special bodies or equipment by other manufacturers or suppliers is not covered.
8. **MAINTENANCE AND PARTS CONSUMED ("Consumables"):** Normal maintenance services including, but not limited to, replacement of oil filters, adjustments of the engine, injection pump, and all other adjustments, are not covered. Parts which are normally consumed or worn out during the engine's normal service life and customarily replaced during usual maintenance service including but not limited to filters are not covered after the first 30 days from the in-service date.
9. **PERFORMANCE COMPLAINTS:** Performance complaints are not covered (for example, low power and poor fuel economy) unless caused by the failure of a qualified part.
10. **OIL CONSUMPTION:** Before a claim for excessive oil consumption will be considered, the owner must provide proof that all recommended maintenance has been performed and submit adequate documentation to show that oil consumption exceeds Volvo Trucks North America published standards. Under no circumstances will warranty pay for excessive oil consumption after 24 months or 250,000 miles (402,000 km), whichever occurs first.
11. **WEAROUT:** Volvo Trucks North America does not cover normal wear of covered parts. Cylinder liner, piston and piston rings failures attributable to wear are specifically excluded from this warranty. The wear rate of parts in any engine, and especially those parts within the combustion area, will vary depending upon operating conditions and environment. Conditions, such as load, trailer configuration, road speed and road conditions, as well as the quality of fuel, lubrication oil, and all filters bear a direct relationship to the wear rate and resulting life of parts. Depending upon the severity of these various conditions, parts wear and resulting failure could occur within the time limit of the coverage.
12. **NON-GENUINE PARTS:** Any vehicle which has been repaired by use of parts and accessories, as well as major assemblies and exchange units, which do not meet factory standards and which cause a vehicle component or system to fail, are not covered.
13. **ODOMETER READING:** Any vehicle in which the odometer has been disconnected or the mileage reading has been altered and/or the actual mileage cannot be readily determined is not covered.
14. **ACCESS TO INFORMATION:** The user must allow Volvo Trucks North America full access to all data stored in all Electronic Control Modules; failure to do so may result in the loss of warranty coverage.
15. **PREMIUM LABOR:** Labor for overtime and/or shift differential is not covered.
16. **EXCESSIVE LABOR:** Excessive labor for a warrantable repair due to the prior installation of equipment or body is not covered.
17. **MISC. EXPENSE:** Meals, lodging, electronic messaging equipment, travel time and expense, loss of cargo, downtime, loss of profit/revenue, rental vehicles, or driver's wages and other miscellaneous expenses are not covered. Shop supplies, lube oil, lubricants, sealers, anti-freeze, filter elements and labor performed by a non-approved location are not covered.
18. **ADDITIONAL COMPONENTS:** Components or parts that are not installed by Volvo Trucks North America are not covered. During a warrantable repair, additional time to remove any customer installed bodies, components, and accessories will not be covered under warranty. Volvo Trucks North America factory manufacturing records will be determinative as to factory installed components.
19. **TOWING:** Towing and/or road service charges due to a failure of a non-covered component or from the result of an accident are not covered. Towing coverage is limited to a single tow per incident for covered vehicles that are accessible from a MAJOR paved highway and towed to the nearest authorized Volvo Trucks service center when a vehicle is inoperable or continued operation would result in additional damage due to a component listed in the Plan's component coverage list.

VOLVO

Volvo Trucks North America
(A Division of Volvo Group North America LLC)
Post Office Box 26115
Greensboro, North Carolina 27402-6115